

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

**Scott Powers, individually, as
Representative of the Estate of Erika Zak,
and as the natural guardian of L.P., a
minor,**

Plaintiff.

V.

**Constantinos Sofocleous and Memorial
Sloan Kettering Cancer Center,**

Defendants.

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**CIVIL ACTION NO.
1:20-cv-02625**

NOTICE OF PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION IN LIMINE
NUMBER 6

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Scott M. Hendler dated August 24, 2022, and the exhibits annex thereto, and upon the accompanying Memorandum of Law in Opposition to Defendants’ Motion in Limine (MIL) number 6, and upon all other papers and proceedings herein, the undersigned will move this Court to deny Defendants’ motion to preclude Stan Smith’s expert testimony.

Defendants' first attempt at filing a MIL was incorrect and they asked this Court for additional time to re-file. Defendants were allowed an extra nine (9) days to preview Plaintiff's filing and expand upon their own. At the same time, they were allowed ten (10) days to respond to Plaintiff's seven (7) MILs, while Plaintiff's were given seven (7) days to respond to Defendants seventeen (17) MILs. Defendants used their additional time to add entirely new evidence; while Defendants were never limited in the amount of evidence to reference in their original filing, they took this opportunity to add new evidence to nearly every MIL. Defendants also used their additional time to add entirely new arguments and legal bases and argument for the exclusion of

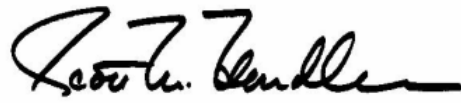
the material in limine. Finally, Defendants used their additional time to add entirely new matters to be considered in limine.

In their MIL number 6, Defendants added arguments to preclude Stan Smith's opinions for lacking a factual basis. Without a declaration attesting to their authenticity, Defendants included following piece of evidence that were not referenced in their original filing: Mr. Smith's Case Information Form; Mr. Smith's work notes, inclusive of Plaintiff interview summary; and relevant portions of Mr. Smith's deposition.

Respectfully submitted,

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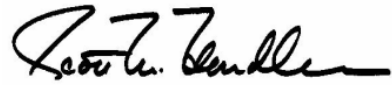
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that, on August 24, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record for Defendants.



Scott M. Hendler